

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 996 of 2005.

PETITIONERS

1. Om Prakash Dutta, Age 36 yrs. S/o. Lae N.N. Dutta, R/o. Near Post Office, Baikunthpur, Distt. Korla (C.G.)
2. Rajesh Nagwani Age 33 yrs. S/o. Late Panjuma Nagwani R/o. Mahalpara Road, Baikunthpur distt, Korla (C.G.)
3. Sanjay Namdeo Age 36 yrs. S/o. Late S.L. Namdeo R/o. Bazarpara, Baikunthpur Distt. Korla (C.G.)
4. Majhar Alam Age 37 years S/o. Shri Makbool Alam R/o. Baisagarpara, Ward No. 9 Baikunthpur, Distt. Korla (C.G.)
5. Vijay Shankar (Nai) Age 38 years S/o. Late Drurpat Nai, R/o. Mandalpara, Village- Majgawa, P.O. Baikunthpur, Distt. Korla (C.G.)
6. Vijay Kumar @ Santosh Trivedi, Age 35 yrs S/o. Late J.N. Trivedi R/o. Hetram Colony, Schoolpara, Ward No. 4, Baikunthpur, Distt. Korla (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh Through : Secretary, Urban Development Department Office : D.K.S. Bhawan, Raipur (C.G.)
2. Director, Directorate of Urban Development, Nagariya Niyojan Avam Vikas C.G. Raipur (Chhattisgarh)
3. Nagar Panchayat Baikunthpur Through : Chief Municipal Officer, Baikunthpur Distt. Korla (C.G.)
4. President, Nagar Panchayat, Baikunthpur Distt. Korla (C.G.)
5. Collector, Korla Distt Korla, Chhattisgarh.

Present : Shri Anant Bajpai, learned counsel for the petitioners.

Shri Utkarsha Verma, learned Dy. G.A., for the State of Chhattisgarh.

Shri Sourabh Sharma, learned counsel for respondents 3 and 4.

ORAL ORDER

(Passed on 22nd December, 2005)

The case of the petitioner in brief is as follows:

The petitioners are small businessmen who are running their business in small Gumties, Thela etc. near the bus stand Baikunthpur, district Korla for the last fifteen years. They have no other source of livelihood. When the matter stood thus, the third respondent, Nagar Panchayat Baikunthpur has constructed 36 shops of which 6 shops were reserved for the petitioners and rest of the shops were required to be auctioned. Although to the above effect is the resolution of the third respondent, the third respondent, Nagar Panchayat and its President are attempting to auction of 36 shops without reserving 6 shops for the petitioners. With the above allegation, the petitioners have sought intervention of this Court.

(2) On service of notice, on behalf of respondents 1, 2 and 5 a reply is filed. In para 2 of the reply it is stated thus:

However, it would be pertinent to point out here that the petitioners who are 6 in number were running and carrying on various business like cycle repairing, fruit & juice shops, Barber Saloon etc in Gumtis which were just in front of the constructed shopping complex. Therefore the major bottleneck in giving the shops of the shopping complex to suitable persons was the existence of these Gumtis which was bang in front of the constructed shopping complex and therefore the already constructed shopping complex could not start and neither could the persons allotted shops in the shopping complex have been able to start their shops without removal of the Gumtis run by the petitioners. To substantiate the above the answering respondents are annexing copy of map showing the actual position, marked and enclosed as Annexure R-1/1 for perusal. It is also submitted that after the construction of the shopping complex was complete initially it was proposed to auction 29 shops keeping in

abeyance the remaining 7 shops out of which 6 shops were to be allotted to the petitioners herein at cost price basis and one more shop was also proposed for being given to one another person namely Tekchand Nagwani, in addition to the petitioners who too was running a Gumti just in front of the constructed shopping complex.

3. The claim of the petitioners squarely rested on the allegation that the respondent has constructed shops in the same plot/area which was earlier occupied by them and therefore, after the new construction they should be allotted shops. This claim of the petitioners is squarely denied by respondents 1, 2 and 5 in their reply. It is specifically pointed out that the new shops are constructed in front of the shops which are in occupation of the petitioners and not on the same land which was earlier occupied by the petitioners after the demolition of those shops. At this stage itself, it needs to be noticed what the petitioners have stated in paragraph 4 of the writ petition. Even according to the petitioners, 36 shops are constructed in the land adjacent to their Gumtis and Thelas etc. Though that is the pleading in paragraph 4 of the writ petition, at the time of hearing, learned counsel for petitioners, would contend that the shops are constructed in the land which was earlier occupied by the petitioners. This contention is required to be noticed only to be rejected for want of support in the pleading. Be that as it may, since 6 shops claimed by the petitioners are constructed in the land in front of the shops now occupied by the petitioner, if the petitioners seek allotment of those shops they should compete with all others who are eligible to compete and they cannot claim any priority or concession in the matter of allotment of those shops. If we keep the mandate of Article 14 of the Constitution of India also, that is the proper procedure to be followed by the third respondent,

Nagar Panchayat. The third respondent who is a State within the meaning of Article 12 of the Constitution, if it wants to part with its largency, it should get maximum return in terms of rent or price. That could be assured only if public auction of the subject shops is conducted.

4. In the result the writ petition is dismissed.

Sd/-

Chief Justice

Brajesh